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Oregon's Project to Codify Choice-of-Law Rules

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On the arid plateau of American choice-of-law legislation, one figure looms large: Symeon Symeonides. His work as Reporter of Louisiana's comprehensive codification of choice-of-law rules and as Co-Rapporteur of a similar project in Puerto Rico are exemplary. The unanimity of the Louisiana legislature's enactment of the conflicts law testifies also to the political savvy that Dean Symeonides must have exercised in a notoriously political state. Fortunately for us in Oregon, his pioneering scholarship and diplomatic skill are already assisting the state in its second-in-the-nation project to enact choice-of-law rules.

The first project of the new Oregon Law Commission[1] to be initiated outside the state legislature is directed toward codification of choice-of-law rules.[2] Oregon is thus the second state, after Louisiana,[3] to undertake to do so. This report analyzes and summarizes Oregon's checkered conflicts jurisprudence and suggests alternatives for statutory reform.

I. BACKGROUND

A. The Choice-of-Law Project

In 1998 the Oregon Law Commission began to develop legislative initiatives and invited outside proposals for law reform projects, in response to which I submitted a proposal in May 1998 to draft choice-of-law rules. The Commission decided in September 1998 to undertake the project. On the Commission's request, I met in December 1998 with two of its members, Chief Justice Wallace Carson of the Oregon Supreme Court and Professor Dom Vetri of the University of Oregon School of Law, to begin planning the project. In January 2000, a newly organized

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1. In 1997, Oregon became "at least" the sixteenth state to establish a commission for revising local law, premised like its sister-state bodies in the advocacy of Jeremy Bentham, Benjamin Cardozo and Roscoe Pound for special governmental bodies to conduct law revision. *See* Dominick Vetri, *Communicating Between Planets: Law Reform for the Twenty-First Century*, 34 Willamette L. Rev. 169, 171, 172-74 (1998). For background, *see also* Hans A. Linde, *Law Revision in Oregon*, 20 Willamette L. Rev. 211, 218 (1984). In December 1998 the Commission, having invited proposals from law schools within the state for cooperative administration of the Commission, selected the Willamette University College of Law to serve in that capacity.

2. That is, rules to guide the judiciary in choosing the appropriate law to govern multi-jurisdictional issues.

3. For a description of the Louisiana codification, including its drafting history, *see* Symeon C. Symeonides, *Private International Law Codification in a Mixed Jurisdiction: The Louisiana Experience*, 57 Rabels Zeitschrift für ausländisches und internationales Privatrecht 460 (1993); *see also* Symeon C. Symeonides, *Louisiana's New Law of Choice of Law for Tort Conflicts: An Exegesis*, 66 Tul. L. Rev. 677 (1992) [hereinafter Louisiana Tort Conflicts].

study group[4] decided to focus initially on choice-of-law rules for contract and tort cases.

Willis Reese, Hans Linde and Symeon Symeonides inspired my proposal. Years ago, Professor Reese, the Reporter for the Restatement (Second) of Conflict of Laws, expressed to me his bewilderment with Oregon's choice-of-law process, purportedly based upon the Restatement (Second) but of derelict application. He suggested a need for further analysis of the rather complicated case law as a first step toward the formulation of clearer rules. More recently, when the Commission began to look around for projects, one of its pioneer members, Professor Linde, suggested that I initiate a proposal for codifying choice-of-law rules. During the first meeting of our planning group, in December 1998, we decided to invite Dean Symeonides, then of the Louisiana State University faculty, to serve as an outside consultant. The logistics of involving him in the project were eased several months later when Willamette University appointed Professor Symeonides as Dean of the College of Law, commencing in July 1999.

II. OREGON'S CHOICE-OF-LAW APPROACH

A. Background

Until 1962, Oregon courts, like those in most states, applied territorialist, jurisdiction-selecting rules—such as the law of the place of wrong, the law of the place of executing a contract, and the law of the place of performing a contract—for choosing the applicable law in multi-jurisdictional disputes.[5] These black-letter rules were based on a doctrine of vested rights, according to which rights become attached to persons, events and activities at prescribed points in time and space. The territorialist rules, as they became known, generally served, or were thought to serve, several important functions of the judicial process: simplicity, predictability, ease of judicial administration, and avoidance of forum shopping. As time went on, however, it became apparent that formulation of the rules did not take sufficient account of the functions and purposes of the rules themselves. The rules seemed more and more artificial. Moreover, interpretation of the rules over time and space produced conflicting results, and creditable application of the rules required a variety of legal fictions and techniques. Finally, the rather mechanical application of jurisdiction-selecting rules did not necessarily produce justice in the individual case.

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4. The Study Group on Conflict of Laws was organized on the basis of expertise, practical experience and representation of bench and bar. The members are: J. Michael Alexander, Wallace Carson, Mildred Carmack, Susan Grabe, Jonathan Hoffman, Maurice Holland, Douglas Houser, Hans Linde, Donald Large, James Nafziger (Reporter), Eugene Scoles, Willaim Snouffer, Symeon Symeonides, Dominick Vetri (Chair); *Ex officio:* Rep. Lane Shetterly, Chair, Oregon Law Commission; Sen. Kate Brown; David Heynderickx, Oregon Legislative Counsel's Office.

5. These rules are enshrined in the Restatement (First) of Conflicts (1934), which is identified with its Reporter, Professor Joseph Beale.

As time went on, courts began to find ways to avoid unjust or simply undesirable results. Use of a public policy exception, manipulation of the substance-procedural characterization of an issue, and recourse to *renvoi*, for example, eased the judicial conscience.[6] Gradually, courts began to shift their focus away from the choice of the appropriate jurisdiction, whose law was to be applied mechanically to govern an entire case, to the choice of the appropriate law to resolve a specific issue. This represented a shift from *multilateralism*, which seeks uniform choice-of-law results wherever a case is brought, to *unilateralism*, which seeks to define the intended or otherwise appropriate spatial reach of conflicting rules, and *substantivism*, which instructs courts to apply the best available substantive law regardless of the goal of multijurisdictional uniformity or the reach of a particular rule.[7] The new learning encouraged the shift toward unilateralism and substantivism by analyzing, variously, such factors as the intended scope of a particular rule of law, its purpose and function(s), its salience for the governing authority, and its relative value in modern society.

Under the new learning, courts began to experiment with more or less prescribed new approaches for resolving conflicts, particularly in contract- and tort-related disputes. Most of these approaches share two characteristics. First, after confirming that a conflict of laws may exist, the modern approaches typically undertake an evaluation of the significance of particular contacts between critical events or persons and the jurisdictions whose laws are ostensibly in conflict, or of the respective interests of those jurisdictions in having their ostensibly conflicting laws applied to govern the issues in a case, or a combination of these two modes of evaluation. Second, the modern approaches encourage an issue-by-issue analysis, engaging, if need be, in dépeçage of a case into discrete, conflict-relevant issues. The main approaches, more or less in order of their progression from jurisdiction-selecting rules to law-selecting criteria, include gravity of contacts; forum preference in the absence of a compelling foreign interest to the contrary; the most significant relationship test of the Restatement (Second) of Conflict of Laws; governmental interest analysis; comparative impairment analysis; and choice-influencing considerations, including the "better rule" factor.[8] Alternative approaches that have largely remained academic include principles of preference in contract cases; functional analysis; special substantive rules and compromises for resolving conflicts, including the "best rule" approach; and expectations theory.[9]

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6. *See, e.g.*, William M. Richman & William L. Reynolds, Understanding Conflict of Laws 113-24 (1984).

7. *See* Gene R. Shreve, *Choice of Law and the Forgiving Constitution*, 71 Ind. L. J. 271, 282-86 (1996).

8. *See, e.g.*, James E. Westbrook, *A Survey and Evaluation of Competing Choice-Of-Law Methodologies: The Case for Eclecticism*, 40 Mo. L. Rev. 407 (1975).

9. *See* Lea Brilmayer, Conflict of Laws: Cases and Materials 366-68 (4th ed. 1995).

B. The Case Law: 1964-85

Oregon case law during the formative period of the new choice-of-law learning has been examined elsewhere.[10] Three early decisions, however, merit specific attention.

In *Lilienthal v. Kaufman*,[11] the Oregon Supreme Court joined the vanguard of the conflicts revolution by adopting a form of governmental interest analysis, at least to govern contract-related conflicts.[12] In *Lilienthal*, the plaintiff, a California resident, sued an Oregon spendthrift for contracted repayment of a loan that the defendant had obtained in California. Although California common law would have upheld the contract, the Oregon Supreme Court ruled that Oregon's spendthrift statute voided it so as to protect the Oregon spendthrift. Having found a true conflict between California and Oregon law, the court, noting that it was an instrument of state policy, broke the tie by applying the Oregon spendthrift law.

Three years later, in *Casey v. Manson Construction & Engineering Co.*,[13] the Oregon Supreme Court extended the new learning to a torts case for the first time. In *Casey*, an Oregon resident brought an action for loss of consortium, alleging that her husband's injury had been caused by the Washington defendant's negligence during the husband's employment on a project in Washington. An Oregon statute conferred a right of consortium, whereas Washington common law denied a spouse the right to sue for loss of consortium. The court, citing *Lilienthal*, undertook a form of interest analysis, concluding that although the dispute implicated substantial interests of both states, Washington had a more significant relationship with the occurrence and the parties. The court therefore applied Washington law to bar recovery. In weighing the respective state interests in this way to resolve what would otherwise be a true conflict, the court appeared to adopt the approach taken in the new Restatement (Second).

In *Erwin v. Thomas*,[14] another Washington-related action for loss of consortium, a Washington plaintiff brought an action against an Oregon defendant to recover for loss of consortium related to her husband's injury in Washington.

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10. *See* James A.R. Nafziger, Conflict of Laws: A Northwest Perspective 136-60 (1985). For further elaboration on insurance-related conflicts issues during the formative period of the new learning, including the texts of pertinent choice-of-law methodologies, *see* James A.R. Nafziger, *Insurance-Related Conflict of Laws*, *in* Oregon State Bar, 1 Insurance § 2.4 (1983) [hereinafter Insurance-Related Conflicts].

11. 395 P.2d 543 (Or. 1964).

12. Although Oregon courts have often described *Lilienthal* as a Restatement (Second) case, the scholarship is virtually unanimous in describing it as an interest analysis case, although the majority opinion does cite a Tentative Draft of the Restatement (Second). *See* Brilmayer, *supra* note 9, at 237; Cramton et al., Conflict of Laws: Cases— Comments—Questions 175 (5th ed. 1993); Andreas F. Lowenfeld, Conflict of Laws: Federal, State, and International Perspectives 232, 243 (2d ed. 1998); Richman & Reynolds, *supra* note 6, at 180; Eugene F. Scoles & Peter Hay et al., Conflict of Laws 77 (3d ed. 2000); Symeon C. Symeonides et. al, Conflict of Laws: American, Comparative, International: Cases and Materials 188 (1998).

13. 428 P.2d 898 (Or. 1967).

14. 506 P.2d 494 (Or. 1973).

The court concluded that Washington had no material interest in the matter because no Washington defendant had been required to respond to the plaintiff's claim. (The court did not explain why the potential extension of insurance proceeds to the Washington plaintiff, even if Washington would not have so provided for them *in a wholly local case*, might not be of interest to that state. The inclination of courts applying the modern approaches is to define governmental interests in terms of benefiting their residents and domiciliaries in the context of resolving a conflict of laws.)[15] The court then determined that Oregon had no material interest because the Oregon legislature likely was unconcerned about the rights of non-resident wives whose husbands were injured outside the state. Thus, the court was faced with the "unprovided for" case where neither state could claim an interest in having its law applied. The court decided to do "what comes naturally" by applying forum law, finding no need to resort to the most significant relationship test of the Restatement (Second), so recently used to resolve a true conflict in *Casey*.

Since *Casey* and *Erwin*, Oregon courts have fairly consistently paid lip service to the Restatement (Second) approach in both tort- and contract-related conflicts. The real questions are, however, whether the courts *actually* apply those rules faithfully and consistently and, if not, whether non-conformity to the stipulated methodology makes any difference.

Generally, the following characteristics of Oregon's approach emerged during the first two decades of judicial experimentation with the new learning:[16]

1. Oregon courts would follow a statutory directive on choice of law.
2. As in most states, Oregon courts continued to apply traditional, territorialist rules to resolve issues other than those involving contracts and torts. For example, interstate or international transfers of real property are governed by the law of the situs (*lex rei sitae*).[17]
3. In tort and contract cases a forum preference which is characteristic of all modern approaches dominated decisions. Oregon courts almost always applied local law to resolve contract- and tort-related conflicts. *Casey* and *Fisher v. Huck*,[18] the latter a case involving co-domiciliaries of a foreign

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15. It is, therefore, somewhat simplistic to argue that the *Erwin* facts posed no potential conflict at all insofar as the plaintiff had no cause of action under either the law of her domicile (Washington), which did not provide damages for loss of consortium, or forum law (Oregon), which presumably had no interest in protecting a non-domiciliary and which therefore would have to provide such damages only on the basis of the domicile in Oregon of a defendant whom Oregon would be inclined to protect from liability. *But see* Larry Kramer, *Rethinking Choice of Law*, 90 Colum. L. Rev. 277, 304-05 (1990).

16. *See also* Nafziger, *supra* note 10, at 144-48.

17. *See, e.g.*, Fry v. D.H. Overmyer Co., 525 P.2d 140 (Or. 1974).

18. 624 P.2d 177 (Or. App. 1981). This decision is nationally renowned for its observation that:

> [w]hen any court embarks on a determination of the 'relevant policies of other interested states and the relative interests of those states in the determination of the particular issue' [Restatement (Second) § 6], the endeavor, in many instances, is like skeet shooting with a bow and arrow: a direct hit is likely to be a rarity, if not pure luck. With that chance of success in mind, we nock the arrow and draw the string.

Id. at 178 (footnote omitted).

jurisdiction, are the major exceptions; they not only chose foreign law but cautioned against forum chauvinism.[19]

4. The appellate courts have adopted an eclectic approach in contract and tort cases. In the well-known words of *Lilienthal*, Oregon courts continue to "refrain from making any pronouncements which might in the future restrain [them] from taking [a new course]."[20] Although the courts have usually described the applicable methodology to be some variant of the Restatement (Second), the overall approach taken has been more of a hybrid of gravity of contacts enumeration, governmental interest analysis, and Restatement (Second) methodology.

5. Leading decisions are often difficult to reconcile with each other. Take, for example, the three formative cases of *Lilienthal, Casey,* and *Erwin*. Why should an unsuspecting California party in a California-based transaction be subject to Oregon's unusual spendthrift law while a Washington party affected by an Oregon defendant's activity within Washington cannot avail herself of Oregon's more normal rule of recovery for loss of consortium? Comparing the same cases, why should the court be decisively concerned about the expectations of outsiders in tort cases (*Casey*) but not in contracts cases (*Lilienthal*) when the expectations of parties are incidental to tort law and paramount in contract law? Why are the interests of a foreign jurisdiction in protecting persons (and prospective defendants) doing business there so important in *Casey* but largely devalued in *Erwin*? Why, after reversing the domiciles of the defendants as between *Casey* and *Erwin*, is Oregon more interested in protecting a Washington plaintiff whom the Oregon law did not seek to protect (*Erwin*) than an Oregon plaintiff whom the Oregon law did seek to protect (*Casey*)? Why is Washington's protective interest interpreted to extend only to its own resident defendants (*Casey*) and not to non-residents licensed and perhaps even encouraged to do business there, ostensibly for the benefit of Washingtonians (*Erwin*)?

If any rules can be drawn from the first twenty years of Oregon's experiment with modern choice-of-law methodology, they seem to be as follows:

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19. "[W]e are warned by highly regarded authority that '[s]tate chauvinism and interstate retaliation are dangers to be avoided." Casey v. Manson Constr. & Eng'g Co., 428 P.2d at 898, 907 (Or. 1967) (footnote omitted).

20. Lilienthal v. Kaufman, 395 P.2d 543, 544 (Or. 1964). *Erwin* added the following observation:

> Our confidence in any set body of rules as an all-encompassing and readily applicable means of solution to conflict cases is not so great that we desire to undertake the application of such rules except in those situations where the policies and interests of the respective states are in substantial opposition. We see no such conflict here and, therefore, find it unnecessary to resort to any such set of rules. We are little concerned whether we are presented with a false conflict or with an actual conflict capable of solution by resorting to our analysis of the interests and policies of the respective states.

506 P.2d at 497.

1. The status of persons as residents or domiciliaries, particularly Oregonians, is of greater interest than the territoriality of events or actions.[21]
2. Where neither jurisdiction has a substantial interest in the outcome of litigation, the *lex fori* will be applied.
3. Where only Oregon's interests and policies are involved, or the parties are both Oregon domiciliaries, the *lex fori* will be applied.
4. Where the foreign jurisdiction, but not Oregon, has an interest, the foreign law will be applied.
5. Where there is an actual or true conflict between the laws of Oregon and another jurisdiction, and the laws are of substantial interest and equal importance to each jurisdiction, Oregon's law will be applied, at least in contracts cases. In tort cases it may be that the most significant relationship test of the Restatement (Second) will be applied.

C. *The Case Law: 1986 to the Present*

Oregon conflicts decisions since 1986 (see Annex) generally confirm the homeward trend and other characteristics of the state's choice-of-law jurisprudence as it emerged during the first two decades of the new learning.[22] Although Oregon courts have chosen foreign law on several occasions in recent years, in one of those cases they did so when Oregon law was not at issue and, in two others, when the foreign law clearly favored Oregon parties.[23] Formally, Oregon courts have continued to look to the Restatement (Second) for guidance, but the methodology applied has been extraordinarily varied.

The most common methodology has involved a two-step test, according to which the courts are to determine whether there is an *actual* conflict before proceeding to ask which legal system has the most (or more) significant relationship to the case. Although the courts fairly consistently phrase the test that way, they typically undertake the first step only to determine whether there is an *ostensible* conflict. After all, if the analysis is to rely on some sort of most significant relationship or governmental interest analysis, the court could hardly conclude in

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21. This seems to be characteristic of interest analysis. *See, e.g.*, P. John Kozyris, *Postscript: Interest Analysis Facing Its Critics—And, Incidentally, What Should be Done About Choice of Law for Products Liability?*, 46 Ohio St. L. J. 569, 573 (1985). *But see Erwin*, 506 P.2d at 494.

22. This compilation includes conflict-relevant information about all reported decisions by the Oregon Supreme Court and Oregon Court of Appeals of any significance and a few of the most important federal court decisions. *See also* Insurance-Related Conflicts, *supra* note 10, at § 2.4 (1992 Supp.). The compilation does not include several decisions involving interstate criminal conflicts of law, decisions where facts pertinent to a conflicts issue had been insufficiently pleaded, or decisions that the pertinent foreign and local law were materially the same or would produce the same result.

23. Manz v. Continental Am. Life Ins. Co., 843 P.2d 480 (Or. App. 1992) (a conflict not involving Oregon law); Webber v. Olsen, 971 P.2d 448 (Or. App. 1998); and Stricklin v. Soued, 936 P.2d 398 (Or. App. 1997) (choice of foreign law favored Oregon parties).

the first step that there is an "actual" conflict before determining, in the second step, where the most significant relationship or interests lie.

Sometimes the court's analysis is indistinguishable from a more or less mechanical gravity of contacts approach.[24] Sometimes the opinions weigh opposing governmental interests, typically finding a false conflict, during an analysis of the most significant "contacts" or "relationships," but seldom do the opinions reveal careful attention to the complex policies underlying conflicting laws.[25] Indeed, the role assigned by *Lilienthal* to public policy as a critical factor in the analysis[26] remains vague. Sometimes it dominates the analysis from start to finish as a sort of parochial *ordre public* exception to a normal choice of foreign law;[27] at other times, it serves (as it should) to define significance of a particular contact or territorial relationship.[28] At still other times, Oregon's public policy serves as the so-called third step in a three-step test that was derived, it is said, from *Lilienthal*. According to this methodology, public policy may serve either as a tie-breaker to resolve a true conflict, as in *Lilienthal* itself, or, even more expansively, to trump foreign law even when the foreign jurisdiction is deemed to have the most significant relationship with a case or particular issue in a case.[29] Finally, the courts have occasionally abandoned any pretense of policy-and-interests methodology in favor of a form of neoterritorialism.[30]

Decisions of federal courts applying Oregon choice-of-law rules in diversity-of-citizenship cases have ranged from a pure gravity of contacts analysis in *389 Orange St. Partners v. Arnold*,[31] a Ninth Circuit opinion, to *Frosty v. Textron, Inc.*[32] and *Pallen v. United Parcel Services General Services Co.*,[33] United States District Court opinions that carefully applied

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24. *See, e.g.*, Webber v. Olsen, 971 P.2d 448 (Or. App. 1998); Holder v. Elg, 948 P.2d 763 (Or. App. 1997); Straight Grain Builders v. Track N' Trail, 760 P.2d 1350 (Or. App. 1988) (in its determination of a parity of significant relationships with California and Oregon); Citizens First Bank v. Intercontinental Express, Inc., 713 P.2d 1097 (Or. App. 1986); *Young v. Mobil Oil Corp.*, 735 P.2d 654 (Or. App. 1987) is particularly interesting in citing *Haag v. Barnes*, 175 N.E.2d 441 (N.Y. App. 1961), a premier gravity-of-contacts analysis, as what the Oregon court mistakenly considered to be the leading authority on "the significant relationship test adopted by New York courts."

25. *See, e.g. Manz*, 843 P.2d at 480; Dobbs v. Silver Eagle Mfg. Co., 779 P.2d 1104 (Or. App. 1989); *Straight Grain Builders*, 760 P.2d at 1350.

26. In *Lilienthal* itself, public policy was the tie breaker for resolving a true conflict between California and Oregon law.

27. *See, e.g., Young*, 735 P.2d at 654.

28. *See, e.g.*, Equitable Life Assur. Soc'y v. McKay, 760 P.2d 871 (Or. 1988) (policy rationale of applying the *lex fori* to govern issues of judicial administration).

29. *See, e.g., Webber*, 971 P.2d at 448; St. Paul Fire & Marine Ins. Co. v. McCormick & Baxter Creosoting Co, 870 P.2d 260 (Or. App.), *modified*, 875 P.2d 537 (1994), *aff'd in part, rev'd in part*, 923 P.2d 1200 (Or. 1996); *Straight Grain Builders*, 760 P.2d at 1350.

30. *See* Cropp v. Interstate Distrib. Co., 880 P.2d 464 (Or. App.), *review denied*, 887 P.2d 791 (1994).

31. 179 F.3d 656 (9th Cir. 1999).

32. 891 F. Supp. 551 (D. Or. 1995).

33. 997 F. Supp. 1367 (D. Or. 1998) (and several companion cases that are identical on the conflicts issue and its resolution).

Oregon's hybrid methodology in a manner consistent with the basic formulations in *Lilienthal* and *Casey*. The two district court opinions are models of careful articulation and *stare decisis*.

The methodological eclecticism and resulting ambiguity, or perhaps confusion, of the Oregon case law is not necessarily bad. After all, a foolish consistency may be the hobgoblin of little minds. Material justice is ultimately what matters most. In any event, some inconsistency should not be surprising insofar as the modern approaches encourage judicial discretion and experimentation. Nor is Oregon unique; eclectic, hybrid methodologies have developed throughout the United States.[34] Moreover, even strict adherence to a particular methodology or approach would not ensure consistency, as the long experience with territorialist rules certainly demonstrated. Reasonable judicial minds may differ on both the integrity of the court's use of the methodology and the justice of the result. Thus, the debate over eclecticism is far from over.[35]

The real question is whether methodological eclecticism produces unexpected or doubtful results in a substantial percentage of conflicts decisions. Unfortunately, the answer seems to be "yes" in Oregon. For example, it is hard to justify the decision in *Young v. Mobil Oil Co.*[36] to void a reasonable choice-of-law clause agreed upon by two business entities, absent any element of adhesion. The New York law would have simply provided indemnification for the payment of a settlement, posing little or no threat to workplace safety as the court seemed to fear. It is also hard to justify the choice of Oregon law in *Straight Grain Builders v. Track N' Trail*,[37] the result of which was to uphold an implied-in-fact contract that was illegal and void in California where it was to be performed (because of the failure of an Oregon contractor to obtain the required building license). Clearly the contract would have been unenforceable in California had the breach-of-contract action been brought there. This encouragement of forum shopping is all the more curious in view of a decision the following year in *Industrial Indemnity v. Pacific Maritime Association*.[38] There, the court applied California law partly to avert the "anomaly" of three potential fora, reaching three different results on the same issues. What is more, the reliance of *Straight Grain Builders* on the validation principle to uphold a California-based contract in favor of an Oregon party is hard to reconcile with *Lilienthal's* refusal to rely on the same principle to uphold another California-based contract, in that instance to the detriment of an Oregon party.

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34. Some nine states and the District of Columbia have adopted a "combined modern" approach in torts, contracts or both kinds of cases. Symeon C. Symeonides, *Choice of Law in the American Courts in 1995: A Year in Review*, 44 Am. J. Comp. L. 181, 195 (1996). In addition, it is likely that the states whose courts have adopted either the Restatement (Second) or interest analysis have employed multiple methodologies and approaches. *See also* William Tetley, *A Canadian Looks at American Conflict of Law Theory and Practice, Especially in the Light of the American Legal and Social Systems (Corrective vs. Distributive Justice)*, 38 Colum. J. Transnat'l L. 299, 322-23 (1999).

35. For an enlightening collection of writings on both sides of this debate, *see* Gene R. Shreve, A Conflict-of-Laws Anthology 229-41 (1997).

36. 735 P.2d 654 (Or. App. 1987).

37. 760 P.2d 1350 (Or. App. 1988).

38. 777 P.2d 1385 (Or. App. 1989).

In *Cropp v. Interstate Distribution Co.*[39] the court, in pristinely selecting the law of the place of wrong to determine a statute-of-limitations issue, confused the circumstances of the wrong itself—for example, was the driver negligent?—with the conflicts issue between the parties. A lengthy and thoughtful dissent reminded the majority of the integrity of Oregon's hybrid conflicts methodology premised on the Restatement (Second) and the issue-specific premise of modern conflicts analysis.[40] Unfortunately, the majority opinion in *Cropp* is only the most obvious example of a tendency of Oregon courts to apply a single analysis of contacts in a case to all issues in it. It is beyond the scope of this commentary to speculate on how an issue-specific approach might have changed the outcome in particular cases. Suffice it to say that dépeçage can, indeed, affect results and certainly would have done so in *Cropp*.

Finally, it is difficult to reconcile two decisions involving California-based transactions. In *Webber v. Olsen,*[41] California's relatively high standard for notification of a change of beneficiary in an insurance policy was applied to the advantage of an Oregon resident who had little direct contact with California, whereas in *Straight Grain Builders,* California's construction licensing requirement was not applied when it would have been harmful to an Oregon resident with substantial involvement in California directly bearing on the breach-of-contract issues in the case. The best explanation for these two decisions would seem to lie in a result-oriented protection of Oregon domiciliaries.

III. STATUTORY OPPORTUNITIES

A. Choice-of-Law Rulemaking

An underlying premise of the so-called conflicts revolution in the United States is that experimentation with the new approaches not only would replace the mechanical application of territorialist rules, but would eventually lead to the formulation of new sets of rules based upon emerging patterns of judicial decisions. Professor David Cavers' "principles of preference"[42] and New York Court of Appeals Judge Fuld's principles to govern guest statute cases (the so-called

39. 880 P.2d 464 (Or. App. 1994).

40. When a true conflict exists, i.e., when both Oregon and the other state have a substantial interest in the outcome of the disputed issue, then the question becomes which state has the greater interest—the most "significant relationship" to the case. . . .

The majority is misdirected by its assumption that, because the accident occurred on California's highways, California substantive law necessarily applies to the entire case. That conclusion begs the question. A complete analysis of all the factors relevant to the question of which state's substantive law applies can lead to only one result: Because of Oregon's substantial interest in the outcome of this case and California's negligible interest, Oregon's substantive law is applicable and, pursuant to ORS 12.430(2), so is its two-year statute of limitations.

880 P.2d at 468 (Rossman, J., dissenting).

41. 971 P.2d 448 (Or. App. 1998).

42. *See* David F. Cavers, The Choice of Law Process (1965).

Neumeier "rules"[43]) are early expressions of this aspiration. In the many years since Judge Fuld formulated the *Neumeier* rules, however, they have been only modestly extended, by analogy, beyond guest statute cases, and there has been little or no effort otherwise to develop other common law rules or principles of preference.

Although Louisiana is the only one of the United States to have enacted a comprehensive choice-of-law code, some 25 civil law jurisdictions abroad have done so during the last four decades.[44] This trend has been described as the "way of the future."[45] Regional agreements on choice-of-law rules have also been reached in recent years.[46] Of course, it might be expected that civil law jurisdictions would be the first to codify choice-of-law rules—in the United States, for example, uniquely civilian Louisiana came first—but there is no inherent correlation between the character of the legal system and the utility of codifying conflicts rules.

Statutory choice-of-law rules govern some legal subjects in Oregon, notably commercial transactions,[47] limitation of judicial actions,[48] unclaimed property,[49] child custody,[50] family support,[51] wills and gifts,[52] environmental cleanup assistance,[53] and transboundary pollution.[54] Would more general codification of Oregon choice-of-law rules be worthwhile? Impressionistically, the answer would seem to be "yes" or perhaps "why not?", in view of the ambiguities in the judicial formulations of choice-of-law rules and the inconsistencies in their application from one case to the next. But, as the Louisiana experience suggests,[55] the drafting agenda is challenging if not daunting.

A study of judicial decisions under Louisiana's comprehensive conflicts statute[56] suggests that codification may, indeed, be worth the effort. The study concluded that the Louisiana statute has, in fact, enhanced the predictability of judicial decisions in that state. The pre-codification rate of appellate court affirmance of trial court conflicts decisions was 52.9% whereas for post-

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43. *See* Neumeier v. Kuehner, 286 N.E.2d 454 (N.Y. 1972).

44. *See* Eugene F. Scoles, et. al., Conflict of Laws 110-13 (3d ed., 2000) (noting reappearance of the Savignian concept of the seat of the relationship in "closest connection" methodology and similarities with Restatement (Second) formulations). *Id.* at 114. *See also* William Tetley, International Conflict of Laws: Common, Civil and Maritime (1994); C.G.J. Morse, *Choice of Law in Tort: A Comparative Survey*, 32 Am. J. Comp. L. 51 (1984).

45. Tetley, *supra* note 34, at 306, 321-22 (arguing that the United States, in not following this trend (except for Louisiana), is "out of step").

46. *Id.*

47. Or. Rev. Stat. §§ 71.1050, 72A.1050, 74A.5070, 78.1100, 79.1030 (1999).

48. Or. Rev. Stat. §§ 12.430-50 (1999).

49. Or. Rev. Stat. §§ 98.304, 98.348, 98.424 (1999).

50. Or. Rev. Stat. §§ 109.700-890 (1999).

51. Or. Rev. Stat. §§ 110.321, 110.411 (1999).

52. Or. Rev. Stat. §§ 112.230, 112.255, 126.809 (1999).

53. Or. Rev. Stat. § 465.480 (1999).

54. Or. Rev. Stat. § 468.080 (1999).

55. *See* Symeonides, *supra* note 3 (both cited articles).

56. Patrick J. Borchers, *Louisiana's Conflicts Codification: Some Empirical Observations Regarding Decisional Predictability*, 60 La. L. Rev. 1061 (2000).

codification decisions, the affirmance rate improved to 76.2%. These statistics may not be free from question, but they are significant.

B. *The Alternatives for Oregon*

The ample literature on codifying conflicts law[57] suggests two general levels of choice-of-law codification that might be described, respectively, as "macro" and "micro." At a "macro" level, one statutory alternative would be simply to provide for the application of a designated methodology—for example, "governmental interest analysis" or "Restatement (Second) rules" to govern at least a range of disputes. The designated methodology might be explicitly articulated—for example, by reiterating the actual steps prescribed by Professor Currie for interest analysis or the matrix of considerations in section 6 of the Restatement (Second) to determine the most significant relationship. Such a project might help stabilize expectations, in some measure enhance predictability, and generally confine the framework of judicial decision-making in conflicts cases. The real issues are not limited to methodological classification, however. Rather, they involve serious inconsistencies and unfairness in applying whatever methodology is adopted. A "macro" approach to codification would therefore be of limited value.

It is preferable, instead, to undertake a more issue-specific "micro" approach in which precise rules are fashioned to govern specific issues, more or less according to the aspiration, if not the result, of the Restatement (Second). One is then confronted with the usual range of methodological alternatives—which one is suitable for Oregon? Elsewhere I have argued that a choice-of-law codification should bear some resemblance to actual practice.[58] With reference to the Complex Litigation Project of the American Law Institute (ALI), my analysis of choice of law in complex litigation of all reported air disaster cases revealed a significant inconsistency between the decisions in consolidated federal cases and probable decisions under the ALI scheme. I concluded that only 40% of the issues would probably be decided the same way under current practice and the ALI scheme. (To be sure, the correlation was closer in non-consolidated cases: 55% in federal diversity cases, 71% in federal statutory cases, and 63% in state court cases.)[59] Explanations for the inconsistency between actual decisions and probable decisions under the ALI scheme may have to do with the relative weight placed by the ALI scheme on such factors as domicile, place of wrong, and *lex fori*. More likely, however, is the probability that current practice borders on randomness and that the courts need more guidance.[60]

If Oregon were to codify the actual pattern of decisions in its modern conflicts jurisprudence, the general and residual rule might be a forum preference, in the absence of compelling reasons for applying foreign law. The most compelling

57. For a useful bibliography, *see* Shreve, *supra* note 35, at 393.

58. James A.R. Nafziger, *Choice of Law in Air Disaster Cases: Complex Litigation Rules and the Common Law*, 54 La. L. Rev. 1001, 1013-14 (1994).

59. *Id.* at 1013.

60. *Id.*

reasons that Oregon courts have been able to find are premised in a preponderant gravity of contacts or on the basis of statutory construction. Thus, courts have concluded that an Oregon statute was not intended to be applied in a particular multi-jurisdictional situation or that a foreign jurisdiction had clearly expressed an overarching interest in having its law applied in such a situation.

It is not necessary to be shackled by practice, however. Why shouldn't Oregon legislate for the future rather than the past? Oregon might expand its horizons to encompass innovative conflicts principles and rules. In the context of contracts, for example, Oregon might strengthen the rule of party autonomy and the principle of validation. In the torts context, statutory rules might incorporate the distinction between conduct-regulating rules, which are often territorial, and loss-allocating rules, which are not apt to be territorial. Another candidate for legislative consideration might be a "victim's choice" rule in cases involving liability for products entered into the mainstream of commerce.

One troublesome and increasingly prominent issue that may merit particular attention relates to environmental pollution insurance.[61] Disputes may arise between an insurer and insured concerning coverage for the costs of investigating and cleaning up environmental contamination. For example, a comprehensive general liability (CGL) insurance policy may contain an exclusion for pollution damage subject to a pro-coverage exception in the instance of sudden and accidental damage.[62] The laws of some states would broadly interpret such an exception to cover gradually discharged pollution, whereas the laws of other states would not. A conflicts issue may therefore arise whenever toxic waste is taken for disposal from one state to a second state and the two states have opposing interpretations of the exception for sudden and accidental damage. With respect to issues related to contracts of fire, surety or casualty insurance generally, the Restatement (Second) provides for choice of the law of the principal location of an insured risk unless another state has a more significant relationship to a transaction and the disputing parties.[63] In practice, when insured parties have initiated legal action against insurers, a phantom principle seems to have been at work that normally favors the insured parties. The court's rationale has been either that the law of the place of risk would favor an insured party or, if that does not work, that any of several construed relationships with the other jurisdiction are controlling.[64] If such a result is just in most cases, a forthright rule to that effect would seem to be preferable to a phantom rule that encourages judicial hocus pocus.

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61. *See* Symeon C. Symeonides, *The Need for a Third Conflicts Restatement (And a Proposal for Tort Conflicts)*, 75 Ind. L. J. (not yet published) (2000) ("during the last two decades, we have witnessed a virtual explosion in litigation involving disputes about insurance coverage for environmental pollution").

62. *See, e.g., St. Paul Fire*, 870 P.2d at 260.

63. Restatement (Second) of Conflicts § 193 (1971).

64. *See* Tetley, *supra* note 34, at 368-70. *See also St. Paul Fire*, 870 P.2d at 260. There is a counter-tendency, however, that has resulted from an increasing number of actions in presumably insurer-friendly or at least friendlier jurisdictions.

In Oregon, however, the choice-of-law process in cases of environmental pollution/cleanup insurance is somewhat different. Oregon's new Environmental Cleanup Assistance Act provides that Oregon law shall be applied whenever the contaminated property to which an action between an insured and an insurer relates is located within the state. However, common law rules governing choice-of-law determinations for sites outside the state continue to apply. In such cases, what are the Oregon rules? *St. Paul Fire v. McCormick and Baxter* establishes that the location of a particular risk (in that case, California) is not controlling. Instead, the "public policy of Oregon should prevail" in actions involving out-of-state sites whenever the foreign state's only contact with the dispute is as the site of the contamination, when disputed liability policies were issued and countersigned within Oregon (reflecting the state's regulatory interest, presumably), and when the insured is an Oregon corporation with its principal place of business in Oregon (reflecting a protective interest, presumably). Beyond that scenario, the choice-of-law rules are unclear.

Since the 1960s, when the Oregon courts first abandoned multilateralist, jurisdiction-selecting rules in tort and contract conflicts, they have consistently adhered to the idea of unilateralist, law-selecting approaches based on an examination of the intended or otherwise appropriate reach of ostensibly conflicting laws. An innovative unilateralist approach, for application in both tort and contract cases, might be to develop something along the lines of proposed "multistate canons of construction,"[65] which operate as default rules to avoid unnecessary exercises in conflicts analysis.

The preferred approach for Oregon might, however, extend beyond unilateralism. A foreign scholar has perceived a trend in American conflicts jurisprudence from interest analysis to what he describes as equity analysis, in a

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65. Proposed canons include the following:

A. A Comparative Impairment Canon: If there is a conflict between two states' laws, and failure to apply one of the laws would render it practically ineffective, that law should be applied.

* * *

B. A Substance/Procedure Canon: In a conflict between a substantive policy and a procedural policy, the law reflecting the substantive policy should prevail unless the forum's procedural interest is so strong that the forum should dismiss on grounds of *forum non conveniens*.

* * *

C. A Canon for Contract Cases: In contract cases, true conflicts should be resolved by applying the law chosen by the parties, or, if no express choice is made, by applying whichever law validates the contract.

* * *

D. A Canon for Laws that are Obsolete: Where one of two conflicting laws is obsolete (i.e., inconsistent with prevailing legal and social norms in the state that enacted it), the other law should be applied.

* * *

E. A Canon for Actual Reliance Interests: Where two laws conflict, but the parties actually and reasonably relied on one of them, that law should be applied.

Kramer, *supra* note 15, at 323-38.

variety of contexts including products liability, personal injury, environmental, and workers' compensation conflicts.[66] In view of this trend, it might be worth exploring the possibility of moving, as to some issues at least, toward a more substantive approach that would scrap the medievalism of defining significant contacts and interests in favor of a more straightforward quest for justice in the individual case. Conflict-of-law rules may be orphans. The role of sovereign authority is ambiguous at best when disputes, by definition, fall between the sovereign cracks. It seems appropriate, therefore, for a court to fashion what it regards as the best compromise to produce a just result. Ultimately, this is what "better rule" jurisdictions have in mind in describing themselves as "justice administering."[67]

Even the better rule approach, however, is unilateral in the sense of limiting the alternatives to whatever rules are supplied by the jurisdictions whose laws are ostensibly in conflict. Special substantive rules for multistate problems,[68] a general commitment to material justice even if it might not product conflicts justice,[69] or "best law" analysis[70] transcend this limitation out of an awareness of both the dilemma and the opportunity presented by conflict of laws. It has been ably argued, for example, that loss-allocating conflicts rules in tort cases merit a substantive approach.[71] Similarly, conflicts between liability-limiting rules may best be resolved by either compromise or a compensation principle, both substantive considerations.

To suggest the possibility of a more substantive resolution of some conflicts is not to suggest that it would be at all wise to avoid some analysis of elements such

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66. Tetley, *supra* note 34, at 372.

67. *See, e.g.*, the classic case of Milkovich v. Saari, 203 N.W.2d 408 (Minn. 1973).

68. *See* Arthur T. von Mehren, *Special Substantive Rules for Multistate Problems: Their Role and Significance in Contemporary Choice of Law Methodology*, 88 Harv. L. Rev. 347 (1974).

69. *See* Friedrich K. Juenger, Choice of Law and Multistate Justice (1993).

70. *See* Luther L. McDougal III, *Toward Application of the Best Rule of Law in Choice of Law Cases*, 35 Mercer L. Rev. 483 (1984).

71. Loss-allocating rules are different. These rules—including negligence, strict liability, and defenses to non-intentional torts—are such because they are backward looking. Their dominant purpose is to look back to an unplanned transaction, paradigmatically an accident, to determine who should bear the loss and in what proportion. . . . Loss-allocating rules . . . look back to unplanned events and attempt to assign the loss justly. Predictability matters less because the liability-creating event is unplanned. Of course, the most just manner for the allocation of loss can be, and often is, controversial, and courts frequently struggle visibly with these decisions.

However, if courts are to approach conflicts of loss-allocating rules pragmatically and fulfill the substantive values underlying these rules, they must assess the justice of the competing rules. Any non-pragmatic approach will promote justice only by happenstance. It matters not whether the choice is based on the place of the accident (as the *First Restatement* counseled), the domiciles of the parties (as Currie counseled), a combination of the two (as the Second Restatement counseled), the alphabetical ordering of the states, or the flip of a coin. Any approach that fails to consider the justice of the competing methods of apportioning the loss will inevitably apportion the loss unjustly in some cases, and thereby frustrate the substantive values.

Patrick J. Borchers, *Conflicts Pragmatism*, 56 Alb. L. Rev. 883, 897-99 (1993) (footnotes omitted).

as significant contacts, governmental interests, policies underlying conflicting laws, and expectations of the parties, that are essential to modern choice-of-law theory. It is not even to suggest that multilateralist (territorialist) goals and rules should be declared dead. It is, however, to suggest a justice-administering alternative to the confusion of Oregon's current eclecticism.

IV. CONCLUSION

Some twenty-five years ago, a leading conflicts scholar concluded that choice-of-law jurisprudence was "being lifted up by the courts to a well-watered plateau high above the sinkhole it once occupied."[72] Symeon Symeonides concluded his meticulous exegesis of Louisiana's statute for tort conflicts on a more modest note.[73] He expressed the hope that the Louisiana project, so ably accomplished under his leadership, at least would enable others to learn from and avoid its mistakes or compromises and perhaps, more positively, would demonstrate that conflicts problems are susceptible to legislative solutions.[74]

Dean Symeonides expressed the further hope that the Louisiana project would also demonstrate that "lessons of modern choice-of-law theories are capable of being compressed into statutory rules."[75] It is with this expectation that the Oregon Law Commission has set forth, as the second in the nation, to translate choice-of-law theory into legislative action. There will be sinkholes to be inspected and avoided as well as new ground to be plowed and sowed. "No location lasts forever, and there are vistas beyond the plateau."[76]

Given the confusion of methodology and result in Oregon's continuing experiment with modern choice-of-law thinking, statutory rules may make a particularly important contribution to judicial decisions in this state. Oregon's project to codify choice-of-law rules provides a salient example of a law reform body's availability to mediate between the judicial and legislative branches of state government.[77]

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72. Robert A. Leflar, *Choice of Law: A Well-Watered Plateau*, 41 Law & Contemp. Probs., Spring 1977, at 10, 26.

73. Symeonides, *Louisiana Tort Conflicts*, *supra* note 3, at 766-67. *See also* Symeon C. Symeonides, *Exploring the "Dismal Swamp": The Revision of Louisiana's Conflicts Law on Successions*, 47 La. L. Rev. 1029, 1101-02 (1987) ("The Louisiana Draft [on the law of succession] does not aspire to be the model for [a process of rule-making]. What is hoped, however, is that the Draft can serve as a point of reference in [the debate concerning the role of conflicts rules].").

74. *Id.* at 767.

75. *Id.*

76. Leflar, *supra* note 72, at 26 (concluding with the observation that the well-watered plateau of choice-of-law was a "rest stop now.").

77. Vetri, *supra* note 1, at 205.

ANNEX
OREGON CHOICE-OF-LAW CASES: 1986-2000
(in reverse chronological order)
STATE CASES

Case Summary	Stated Methodology, Application and Choice of Law
Mutual of Enumclaw Ins. Co. v. Payne, 993 P.2d 186 (Or. App. 1999). **1.** ***Facts*:** The plaintiff, a Washington insurance company, issued in Washington an automobile liability insurance policy to the defendant's employer that covered several vehicles registered and garaged in Washington and one to the defendant covering a vehicle registered and garaged in Oregon. The defendant, the insured's employee, is an Oregon resident who suffered injuries when he was struck while standing on a road in Oregon near his vehicle by a truck driven by an uninsured motorist. He claimed that he had stopped to help direct traffic at the scene of an accident. The uninsured motorist and personal injury protection sections of the insured's policy limited coverage to persons injured while "occupying" the vehicle. Oregon law would interpret the word "occupying" narrowly to exclude the defendant from coverage. Washington statutory law, however, broadened the definition of "occupying" to include all persons "using" an insured vehicle, as in the defendant's case. A conformity clause specified that "terms of this policy which are in conflict with the statutes of the State where this policy is issued [i.e., Washington] are amended to conform to such statutes." **2.** ***Choice-of-law issue*:** Did Washington's conformity clause apply so as to extend insurance coverage to an Oregon resident involved in an Oregon accident or would Oregon law apply so as to bar recovery by the defendant?	**1.** ***Stated methodology:*** Unclear, but the court seems to accept the materiality of the most significant relationship test. **2.** ***Application*:** Statutory construction, as elaborated in case law. The court held that the conformity clause under Washington law applies only to vehicles registered and garaged in Washington. Thus, Washington, having little or no express interest in protecting an Oregon defendant, did not have the most significant relationship with the policy as the defendant had argued. **3.** ***Choice of Law:*** Oregon

Case Summary	Stated Methodology, Application and Choice of Law
Webber v. Olsen, 971 P.2d 448 (Or. App. 1998). 1. ***Facts***: A decedent's widow and children brought action against the decedent's former wife, claiming that they, rather than she, were entitled to proceeds of the decedent's life insurance policy. The decedent and his former wife had resided in Oregon at the time the policy was purchased. The husband moved to California and the couple dissolved their marriage. The husband, having married the plaintiff wife, attempted to change his designation of beneficiaries in the insurance policy. His notification of the change conformed with Oregon's lenient standard for notification but not California's. 2. ***Choice-of-law issue***: Did Oregon's lenient standard for notification of a change of beneficiary apply so as to entitle the plaintiffs to insurance proceeds or did California's higher standard for notification apply so as to defeat the plaintiffs' claim?	1. ***Stated methodology:*** Three-step test: Are the contending laws actually in conflict? If so, do either or both jurisdictions have a substantial interest in the dispute? Are Oregon's interests so important that the court should not apply the foreign law? 2. ***Application***: Gravity of contacts, citing *Lilienthal's* interest-based most significant relationship test and noting the lack of evidence of any overriding Oregon policy. 3. ***Choice of Law:*** California

Case Summary	Stated Methodology, Application and Choice of Law
Angelini v. Delaney, 966 P.2d 223 (Or. App. 1998), *review denied*, 987 P.2d 514 (Or. 1999). **1.** ***Facts***: In a quiet title action brought by the California owners of a mobile home park in Oregon, the defendants—a California corporation and a California principal of the same corporation—brought several counterclaims. The counterclaims arose out of third-party loans made in California for the benefit of the park; these loans had been satisfied by the manager. The court identified only one difference between California and Oregon law, and that difference was immaterial: California's shorter statute of limitations. **2.** ***Choice-of-law issue***: Does Oregon law apply to a dispute involving a California corporation and several California residents arising out of loans made in California to pay necessary management expenses of a mobile home park located in Oregon?	**1.** ***Stated methodology:*** Unclear but apparently a two-step test under the Restatement (Second): Whether "there is a material difference between Oregon substantive law and the law of the other forum. If there is no material difference—if there is a 'false conflict'—Oregon law applies." **2.** ***Application***: Two-step test, the first step of which presumably resolved the choice-of-law issue because the plaintiffs failed to carry the burden to prove "material differences in the applicable substantive law of Oregon and California." **3.** ***Choice of Law***: Oregon

Case Summary	Stated Methodology, Application and Choice of Law
Holder v. Elg, 948 P.2d 763 (Or. App. 1997). **1.** ***Facts***: An Idaho state court awarded judgments for plaintiffs, including attorney fees, on two promissory notes. Both notes contained attorney fee provisions in the event of a successful action to collect on them. When the Idaho judgments were entered, Idaho law, unlike Oregon law, did not recognize the right of post-judgment attorney fees. The plaintiffs sought enforcement of the judgments in Oregon in accordance with the Uniform Enforcement of Foreign Judgments Act. After the defendants failed to satisfy the judgments, the plaintiffs pursued enforcement in both Oregon and California, where the defendants owned real and personal property. The plaintiffs later brought actions in Oregon and California against the defendants under the Uniform Fraudulent Transfer Act, alleging that they had fraudulently transferred property in both states in an attempt to avoid satisfaction of the Idaho judgments. **2.** ***Choice-of-law issue***: Does Oregon's law providing for the award of attorney fees apply to a foreign judgment whose enforcement is sought in an Oregon court or does Idaho law, denying attorney's fees, apply as part of an Idaho judgment?	**1.** ***Stated methodology:*** Most significant contacts, with reference to a specific Restatement (Second) rule. **2.** ***Application***: Gravity of contacts, but noting a lack of Idaho interest in an Oregon collection action. **3.** ***Choice of Law:*** Oregon

Case Summary	Stated Methodology, Application and Choice of Law
Stricklin v. Soued, 936 P.2d 398 (Or. App. 1997). **1.** ***Facts***: The plaintiff was the holder by assignment of a promissory note secured by a trust deed executed in California on real property there. The plaintiff claimed that the Oregon defendants, as general partners of the maker of the note, defaulted on it. California law would require the plaintiff, as a secured creditor, to proceed first against the security before enforcing the underlying debt (the "security first" rule). Oregon has no "security first" requirement. **2.** ***Choice-of-law issues***: Is the California security-first requirement procedural and therefore non-applicable in Oregon litigation, or substantive, thereby presenting a conflict of laws? If the latter, which law governs?	**1.** ***Stated methodology:*** After rejecting any mechanical reliance on the substantive-procedural characterization, the court undertook a "significant contacts analysis" under a two-part test. **2.** ***Application:*** Weighing of interests, after determining that the issue was not one of judicial administration (corresponding, roughly speaking, to a procedural issue). The court based its choice of law on the gravity of contacts and the lack of a paramount Oregon interest other than the after-acquired Oregon domicile by the defendants in a transaction, involving a California promissory note secured by California property. The court could find no Oregon interest in applying its policy towards creditors and debtors that is more important than California's longstanding interest in the application of the "security-first" rule. **3.** ***Choice of Law:*** California

Case Summary	Stated Methodology, Application and Choice of Law
Zidell Marine Corp. v. West Painting, Inc., 894 P.2d 481 (Or. App. 1995). **1. *Facts*:** The plaintiff brought an action to determine priority among competing claims to money the plaintiff owed defendant. West, a Washington corporation, which owed money to the other defendants. According to U.C.C. § 9-103, as enacted in Oregon, whether the defendant Capital had a perfected security interest depended on whether it properly filed a financing statement in Washington, the state where the debtor was located. Even though the trial court mentioned that a financing statement was filed in Washington, neither it nor its contents were in the record. **2. *Choice-of-law issue*:** Is there a perfected security interest when it is uncertain from the record that a financing statement was filed in Washington, the state where the debtor is located?	**1. *Stated methodology:*** None. The majority ignored the choice-of-law issue. **2. *Application:*** None **3. *Dissent:*** Statutory construction under the UCC revealed the choice-of-law issue. Washington and not Oregon law would apply to decide whether there was a perfected interest when the debtor was located in Washington. **4. *Choice of Law:*** Oregon

Case Summary	Stated Methodology, Application and Choice of Law
Cropp v. Interstate Distrib. Co., 880 P.2d 464 (Or. App.), *review denied*, 887 P.2d 791 (Or. 1994). 1. ***Facts***: The plaintiffs were self-employed truck drivers who lived in Oregon and worked in five states, including Oregon. They brought an action against the defendants seeking money damages for personal injuries and property damage that they sustained when a truck, owned by a Washington defendant and driven by a Nevada defendant, collided with their own parked truck in California. Both defendants worked mainly in California. California's one-year statute of limitations would bar the action whereas Oregon's two-year statute would allow it. 2. ***Choice-of-law issue***: Does Oregon's Uniform Conflict of Laws Limitations Act require application of the California statute to bar an action allowable under Oregon's statute insofar as the underlying claim is substantively based on a California accident?	1. ***Stated methodology:*** Unclear, but perhaps statutory construction. 2. ***Application***: Neoterritorialism. Plaintiff's allegations concern the parties' rights and responsibilities in operating motor vehicles on California highways. Therefore, its law applies. 3. ***Dissent***: Applying the most significant relationship test, as set forth in the Restatement (Second), *four* questions must be asked. 1) Is there an actual conflict? 2) Does Oregon have a substantial interest in the outcome of the disputed issue? 3) Does the other state have a substantial interest in the outcome of the disputed issue? 4) If there is a conflict, which state has a *greater* interest in the outcome of the dispute? California's only relationship to the action, the place of the accident, is fortuitous. Any interest it might have in traffic safety is met by enforcement of its traffic laws. The more significant contacts of residence and economic impact are with Oregon. 4. ***Choice of Law:*** California

Case Summary	Stated Methodology, Application and Choice of Law
St. Paul Fire & Marine Ins. Co., v. McCormick & Baxter Creosoting Co., 870 P.2d 260 (Or. App.), *modified*, 875 P.2d 537 (Or. App. 1994), *aff'd in part, rev'd in part*, 923 P.2d 1200 (Or. 1996). **1.** ***Facts***: Insurers, none of them Oregon carriers, brought an action against the insured operator of wood treatment plants, an Oregon corporation, seeking a declaration of coverage under various liability policies. Most, if not all, of the insurance policies were issued by an Oregon insurance broker and were countersigned in Oregon. As a result of defendant's operations in Oregon and California, chemicals had contaminated the soil and groundwater. The substantive issues were whether damage had to manifest itself to trigger coverage and whether damage was within an exception to pollution exclusion for sudden and accidental discharge. The court did not identify any material difference between the ostensibly conflicting laws. **2.** ***Choice-of-law issue***: Does Oregon have a substantial interest in applying its insurance laws to determine the rights and duties of the parties to insurance policies protecting California operations by California insurers, when the owner of the plant was from Oregon, and most, if not all of the policies were issued and countersigned in Oregon?	**1.** ***Stated methodology:*** Unclear, but the court cited *Lilienthal*. **2.** ***Application:*** Mere contacts were insufficient, but weighing of interests and public policy to resolve the conflict was instrumental. **3.** ***Choice of Law:*** Oregon

Case Summary	Stated Methodology, Application and Choice of Law
Stubbs v. Weathersby, 869 P.2d 893 (Or.App. 1994), *aff'd*, 892 P.2d 991 (Or. 1995). 1. ***Facts***: A mother objected to the petition for adoption of her child filed by Oregon residents and based on the mother's written consent given in Washington. The consent complied with Oregon law but it lacked the formalities required by Washington law. 2. ***Choice-of-law issue***: Does Washington or Oregon law apply to determine the validity of a mother's consent, the Oregon court having established jurisdiction over a petition for adoption?	1. ***Stated methodology:*** Restatement (Second). 2. ***Application:*** Restatement (Second) and statutory construction. Once "home state" jurisdiction over an adoption proceeding has been decided under the Uniform Child Custody Jurisdiction Act (UCCJA), no choice-of-law problem arises. The law of the forum applies. 3. ***Choice of Law:*** Oregon
Fiedler v. Bowler, 843 P.2d 961 (Or. App. 1992). 1. ***Facts***: A creditor brought an action to collect on a note secured by four houses in Indiana. Under Oregon law, unlike Indiana law, the prevailing party may be awarded attorney fees if the note allows award of them to any party. The note itself provided for Indiana law to be applied, apparently in the event of a dispute arising out of the note. 2. ***Choice-of-law issue***: Does Oregon public policy override a note's choice of Indiana law to allow an award of attorney fees on a claim based on the note?	1. ***Stated methodology:*** Enforcement of choice-of-law provision "unless doing so would circumvent a fundamental public policy of Oregon law." 2. ***Application:*** Defendants did not identify any public policy basis to constrain the parties' choice-of-law provision. 3. ***Choice of Law:*** Indiana

Case Summary	Stated Methodology, Application and Choice of Law
Manz v. Continental Am. Life Ins. Co., 843 P.2d 480 (Or. App. 1992). 1. ***Facts***: The plaintiff, an Oregon resident, brought this action to recover amounts allegedly due under a group health insurance policy issued by defendant, a Pennsylvania resident, and held by an Illinois trustee. The policy covered the employees of a Washington business and their dependents. After incurring medical expenses that were covered under the terms of the policy, the plaintiff submitted a claim. The defendant denied that claim because it believed that the enrollment card submitted by the plaintiff's husband misrepresented the plaintiff's medical history. The defendant argued that under applicable Illinois law, unlike Washington law, it could rely on the material misrepresentation contained on the enrollment card to support its defense. This was so even if the insurer had not provided the insured with a copy of the statements for his review when it issued the insurance policy. 2. ***Choice-of-law issue***: Should Washington or Illinois law apply to a claim based on a group insurance policy held by an Illinois trustee, but offered, accepted, and to be performed in Washington?	1. ***Stated methodology:*** Two-part test: Is there an actual conflict? If so, under the Restatement (Second), which state has the most significant contacts showing that the state has an interest in having its law applied to the dispute? 2. ***Application***: Two-part test: The court concluded, somewhat summarily, that Illinois "has no interest" simply because it is the physical situs of the group master policy. The court determined that the one contact Illinois had with this dispute, as the location of the trust over the group master policy, did not engage a state interest. Washington's interest is expressed in its insurance code, which covers all Washington insurance transactions. Consequently Washington has the most significant contacts with the dispute. 3. ***Choice of Law:*** Washington law (Oregon law was not at issue, although the plaintiff argued that an Illinois statute incorporated Oregon law).

Case Summary	Stated Methodology, Application and Choice of Law
Allen v. American Hardwoods, 795 P.2d 592 (Or. App. 1990). 1. ***Facts***: An Oregon workers' compensation insurer sought distribution of third-party settlement proceeds for non-economic losses obtained from a Michigan company by a deceased worker's beneficiary and an injured worker, both of whom were Oregon residents. The underlying claims related to an accident in Michigan. The agreement between the parties contained a choice-of-law provision adopting Michigan law, which, unlike Oregon law, did not allow reimbursement to a workers' compensation insurer of a settlement for non-economic loss only. 2. ***Choice-of-law issue***: Does Oregon law apply so as to allow a claim for the distribution of a third-party settlement initiated by an Oregon workers' compensation insurer against two Oregon residents, or does Michigan law, insulating proceeds from the insurer's reach, apply on the basis that the underlying accident was in Michigan and the workers settled with a Michigan company an issue of non-economic losses under a Michigan choice-of-law provision?	1. ***Stated methodology:*** Restatement (Second) principles and black-letter rules. 2. ***Application***: The issue of defendant's rights to share in the settlement proceeds concerned the relationship of an Oregon worker, an Oregon workers' compensation carrier and, indirectly at least, an Oregon employer. The court agreed with a determination by the Oregon Workers' Compensation Board that Michigan had no substantial interest within the framework of the Restatement (Second) in protecting Oregon workers from the reach of an Oregon insurer. Oregon, however, had a vital interest in applying its law to protect an Oregon insurer. 3. ***Choice of Law:*** Oregon

Case Summary	Stated Methodology, Application and Choice of Law
Perez v. Coast to Coast Reforestation Corp., 785 P.2d 365 (Or. App. 1990). **1.** ***Facts***: The plaintiffs, Oregon residents, were recruited in Oregon to perform reforestation work in Idaho by the defendants, Oregon residents. The plaintiffs sued farm contractors for unpaid wages and penalties under Oregon's Farm Labor Contractors Act. Idaho, on the other hand, did not provide such protection to farmworkers. **2.** ***Choice-of-law issue:*** Does Oregon law apply so as to protect a farm worker under a contract signed in Oregon by Oregon parties, to be performed in Idaho, or does Idaho's non-protective law apply because of the worksite there?	**1.** ***Stated methodology***: Unclear. **2.** ***Application***: Controlling Oregon-based statute that "embodies a strong public policy" reflects an important fundamental interest in farm worker transactions in Oregon between Oregon workers and employers. The court also mentioned the strong public policy and important fundamental interest of Oregon in cases arising under the Act. Idaho did not have a similar statute. **3.** ***Choice of Law:*** Oregon
Dabbs v. Silver Eagle Mfg. Co., 779 P.2d 1104 (Or. App.), *review denied*, 784 P.2d 1101 (Or. 1989). **1.** ***Facts***: Tennessee residents brought a product liability claim against an Oregon company for injuries suffered in Tennessee resulting from an alleged defect in a product designed and manufactured in Oregon and sold in Tennessee. The claim was within Oregon's statute of limitations but beyond the time limitation of Tennessee's statute. **2.** ***Choice-of-law issue***: In a products liability action does an Oregon manufacturer have a vested right to a Tennessee limitations defense where the alleged injuries were suffered in Tennessee, by Tennessee residents, from a product sold in Tennessee?	**1.** ***Stated methodology:*** Two-step analysis: Is there a choice-of-law issue engaging substantial interests and policies of both states? If so, which state has the "most significant relationship" with the dispute? **2.** ***Application***: Restatement (Second) principles and black-letter rules. **3.** ***Choice of Law:*** Oregon

Case Summary	Stated Methodology, Application and Choice of Law
Industrial Indem. v. Pacific Maritime Ass'n, 777 P.2d 1385 (Or. App. 1989). 1. ***Facts***: The plaintiff, a California corporation, issued in California a standard comprehensive general liability (CGL) policy to the defendant, a California corporation, and an association of 120 steamship, stevedore and terminal companies that operate in Oregon, Washington and California. Hill, an Oregon domiciliary, filed a claim in federal court in Oregon against the defendant and others. He alleged that the local union had engaged in intentional discriminatory conduct against him in Oregon by refusing to afford him a certain job assignment because of his race. The indemnity contract was executed and to be performed in California, where the insurer and insured were domiciled. The plaintiff filed this declaratory judgment action to determine its responsibility, if any, for the expenses incurred by the defendant in its defense against Hill's claim. Under California, but not Oregon, law, an insurer must defend a claim that potentially seeks damages within the coverage of the policy. 2. ***Choice-of-law issue***: Should Oregon law govern the allegations of a California insurer under a policy issued in that state that covered a California corporation doing business in California, Oregon, and Washington where the actions occurred in Oregon?	1. ***Stated methodology:*** Law of the state with the most contacts. 2. ***Application***: California had "the more significant relationship" to the parties and their insurance contract. Also, as a matter of multistate policy, an anomaly of contract interpretation would result if the laws of three potential fora were variously applied in three separate actions. 3. ***Choice of Law:*** California

Case Summary	Stated Methodology, Application and Choice of Law
Straight Grain Builders v. Track N' Trail, 760 P.2d 1350 (Or. App. 1988). 1. ***Facts***: The plaintiff, an Oregon company, brought a breach-of-contract action against a California company. They had entered into an unwritten, implied-in-fact contract in California for the plaintiff to build stores in California, although much of the material used in the construction came from Oregon and much of the labor was performed in Oregon. One of the stores was designed by an Oregon architect, who was also licensed in California. The parties' relationship originated in Oregon, where plaintiff's first work for defendant was performed. They met once in Oregon and twice in California prior to the agreement to do the work involved in this case. Under California but not Oregon substantive law, all residential and commercial builders must obtain licenses. Contracts entered into without doing so are "illegal and void." 2. ***Choice-of-law issue***: Do California's licensing requirements apply to render an implied-in-fact contract for the construction of commercial property in California null and void when it would be valid under Oregon law?	1. ***Stated methodology:*** *Lilienthal*'s general approach, involving a consideration of three factors: Which state had the most significant relationship to the parties and the transaction; the rule of validation; and a determination of whether the interests of Oregon (its 'public policy') are so basic and important that an Oregon court should not apply California law, despite its significant connection with the transaction. 2. ***Application***: Gravity of contact analysis, which established that both states had roughly equal contacts with the parties and the transaction. Oregon's interest in protecting its citizens was substantial. On the other hand, California's interest in protecting its consumers from dishonesty and incompetence was not affected when neither had been alleged. "Oregon's public policy of enforcing the agreement between the parties, together with the rule of validation, outweighs California's policy of invalidating it and closing its courts to such actions." 3. ***Choice of Law:*** Oregon

Case Summary	Stated Methodology, Application and Choice of Law
Equitable Life Assurance Soc'y v. McKay, 760 P.2d 871 (Or. 1988). **1.** ***Facts***: Plaintiff brought an action to settle conflicting claims to the proceeds of two life insurance policies issued to decedent. Defendants are decedent's widow, who claimed that the decedent actually had intended that she be named as the beneficiary, and decedent's children from a previous marriage, named as the sole beneficiaries. Washington's Deadman's Statute, unlike Oregon's law, precluded the widow and the insurance agent from testifying about the decedent's intent. The parties had stipulated that Washington's substantive law applied to the action. **2.** ***Choice-of-law issue***: On certification of the following question from the United States Court of Appeals for the Ninth Circuit: Under Oregon law, is the Washington Deadman's Statute substantive or procedural?	**1.** ***Stated methodology:*** *Lilienthal*'s "significant contacts" and Restatement (Second) rules. **2.** ***Application***: The characterization of a statute as substantive or procedural merely states a conclusion. In *Lilienthal* the court adopted a "significant contacts" choice-of-law analysis. The Restatement (Second) establishes that local law applies to rules prescribing how litigation must be conducted. The court held that rules governing such issues as joinder of parties, pleading, discovery, the admissibility of evidence, competence of witnesses and witness credibility relate to the administration of justice. The law of the forum state applies to those matters. **3.** ***Choice of Law:*** Oregon

Case Summary	Stated Methodology, Application and Choice of Law
Young v. Mobil Oil Corp., 735 P.2d 654 (Or. App. 1987). 1. ***Facts***: Mobil was a New York corporation with headquarters in that state, and Myers was a subsidiary of a California corporation. Mobil entered into a contract with Myers that was negotiated in California. It provided that Myers would pick up oil drums from Mobil's plant in Portland, recondition them at its Portland plant and return the drums to Mobil. Myers would "indemnify and hold Mobil harmless against all losses, expenses, liability and claims for death, personal injury or property damage arising out of the work hereunder by Myers or any subcontractor or their agents or employees." A choice-of-law clause in the contract provided that New York law was to govern disputes arising under it. An employee of Myers suffered injuries at Mobil's plant. As permitted by the workers' compensation system, he and his wife brought an action against Mobil. Mobil, having filed a third-party complaint against Myers, later settled with Myers' employee and his wife. When Myers declined to participate in the settlement, Mobil pursued its contractual indemnity claim. 2. ***Choice-of-law issue***: Is a contractual indemnity clause enforceable when it is allowed by New York, the state whose law was chosen by the parties, but would violate the public policy of Oregon, the state where the accident occurred?	1. ***Stated methodology:*** Restatement (Second). 2. ***Application***: Public policy exception. The court acknowledged that choice-of-law clauses are generally enforceable, but that rule is not absolute. The court held that contractual indemnity clauses run counter to Oregon's fundamental public policy of encouraging workplace safety, as established by Oregon's Workers' Compensation Act. Oregon's law must therefore be applied. 3. ***Choice of Law:*** Oregon

Case Summary	Stated Methodology, Application and Choice of Law
Warm Springs Forest Prods. Indus. v. Employee Benefits Ins. Co., 716 P.2d 740 (Or. 1986). 1. ***Facts***: The defendant, an Oregon insurance company, made an oral promise to the plaintiff, an Indian tribal entity, to rebate part of the premium of a policy for workers' compensation coverage. Two provisions of the policy referred to Oregon law, which would not support an oral promise because it was not "plainly expressed in the policy." The plaintiff maintained, however, that the contract must be enforced under tribal law, within the framework of federal Indian law. 2. ***Choice-of-law issue***: Does Oregon law apply so as to deny an Indian tribal entity the benefit of an oral promise made on an Indian reservation and to be performed there by an Oregon insurance company in favor of an Indian tribal entity, or does tribal law apply so as to enforce the promise?	1. ***Stated methodology:*** Construction of contract and lack of evidence of opposing tribal law. 2. ***Application:*** None 3. ***Dissent***: With regard to the tort claim, a Restatement (Second) identification of significant contacts pointed to the applicability of Warm Springs tribal law. Provisions in the contract referring to controlling Oregon law were too ambiguous to be reliable as a basis for applying Oregon laws. Warm Springs could prove a "clearly more important" interest than Oregon. The allegations would introduce evidence from which one could conclude that Warm Springs had an overriding interest in having its own law apply. Tribal law should govern the conduct of foreign businesses which come onto the reservation or initiate contact with Warm Springs for the purpose of making representations that may induce Warm Springs divisions or enterprises to contract with those businesses rather than others. 4. ***Choice of Law:*** Oregon

Case Summary	Stated Methodology, Application and Choice of Law
Citizens First Bank v. Intercontinental Express, Inc., 713 P.2d 1097 (Or. App. 1986). 1. ***Facts***: The plaintiff, a Washington bank, commenced an action to recover damages arising out of defendant's refusal to pay two checks. The defendant is an Oregon corporation with its principal place of business in Oregon. It issued the checks payable to one Sero and delivered them to him in Portland. The checks were drawn on the Portland branch of the Bank of California. Sero deposited the checks in his account at the plaintiff's branch in Washington. When the defendant stopped payment of the checks, the plaintiff demanded payment on the checks from the defendant. Although the plaintiff received a judgment in its favor, it was denied attorney's fees under Washington law. 2. ***Choice-of-law issue***: Does Oregon law apply so as to permit an award of attorney's fees in a suit successfully brought by a Washington bank against an Oregon corporation which had stopped payment on checks drawn on an Oregon bank and delivered in Oregon, or does Washington law apply so as to deny attorney's fees?	1. ***Stated methodology:*** Most significant relationship test. 2. ***Application***: Gravity of contacts, coupled with an observation that Washington had no interest in whether the plaintiff recovered attorney's fees. The court deemed Oregon to have the most significant relationship to the transaction and to the parties because the checks were drawn and delivered in Oregon by an Oregon company on the Oregon branch of a bank, and defendant stopped payment and refused to pay them in Oregon. 3. ***Choice of Law:*** Oregon

ANNEX
OREGON CHOICE-OF-LAW CASES: 1998-2000
(in reverse chronological order)
FEDERAL CASES

Case Summary	Stated Methodology, Application, and Choice of Law
389 Orange St. Partners v. Arnold, 170 F.3d 1200 (9th Cir.), *amended and superseded*, 179 F.3d 656 (9th Cir. 1999). 1. ***Facts***: An employer, the Portland Trail Blazers of the National Basketball Association, brought an interpleader action against one of its players, Cliff Robinson, and a lender to determine the appropriate recipient of the employee's wages under an assignment and agreement between the employee and the lender, secured by the employee's real property in Connecticut. The employee cross-claimed against the lender and another, asserting injury as a result of the lender's fraud, misrepresentation and other tortious conduct in Connecticut. The lender filed a cross-claim for payment due on a promissory note. The lenders were Connecticut residents, the relationship between the parties was centered there, the allegedly fraudulent documents were signed there, and the secured property was there. Under Connecticut's statute of limitations, unlike Oregon's, the employee's crossclaims would be barred. 2. ***Choice-of-law issue***: Does Connecticut's statute of limitations apply so as to bar an Oregon defendant's cross-claim against a Connecticut defendant for questionable practices allegedly committed in Connecticut and related to real property there?	1. ***Stated methodology:*** Restatement (Second). 2. ***Application***: Gravity of contacts. In tort actions, the Restatement (Second) focuses on the places of injury, conduct, domicile, nationality, incorporation, business, and relationship, which were mostly in Connecticut. The only Oregon factor was the domicile of one of the defendants. Under the Oregon Uniform Conflict of Laws-Limitations Act, when an underlying claim is substantively based upon the law of another state, its limitation period also applies. 3. ***Choice of Law:*** Connecticut

Case Summary	Stated Methodology, Application, and Choice of Law
Pallen v. United Parcel Gen. Serv. Services Co., 997 F. Supp. 2d 1367 (D. Or. 1998) (and companion cases). 1. ***Facts***: UPS employees brought suit against UPS and other companies for injuries caused by the use of hand-held computers in performance of their jobs. None of the parties were Oregon residents. Some of the defendants did not conduct business in Oregon and none of the injuries occurred in Oregon. The computers were neither designed nor manufactured in Oregon. The laws of Oregon differed materially from those of other relevant states, however. 2. ***Choice-of-law issue***: Does Oregon law or the home state laws of the plaintiffs apply to product liability claims, when none of the plaintiffs were from Oregon, none of them were injured in Oregon, some of the defendants did not conduct business in Oregon, and the computers were neither designed nor manufactured in Oregon?	1. ***Stated methodology:*** Two-step analysis: Is there an actual conflict? If not, Oregon law applies. Do both states have a substantial interest in applying their laws? If not, the law of the state with substantial interests applies; if both have a substantial interest, apply the most significant relationship approach of the Restatement (Second). 2. ***Application:*** With regard to the workers' compensation issues, there was no conflict because the parties agreed to apply the laws of the home states of the plaintiffs. With regard to the negligence claims, the parties agreed that there was no conflict; therefore the court applied Oregon law. With regard to the product liability claims, the court found that there was an actual conflict, citing examples of Illinois law. The court concluded that Oregon had neither a substantial interest in applying its product liability laws, nor the most significant relationship to the facts and the parties. The reasons for this conclusion were: 1) the plaintiffs were not Oregon residents; 2) the plaintiffs were not injured in Oregon; 3) some of the defendants did not conduct business in Oregon; 4) the hand-held computers were neither designed nor manufactured in

Case Summary	Stated Methodology, Application, and Choice of Law
	Oregon. 3. ***Choice of Law:*** Home state laws of the plaintiffs applied to the workers' compensation (by stipulation between the parties) and product liability claims. Oregon law applied to the negligence claims.
Frosty v. Textron, Inc., 891 F. Supp. 551 (D. Or. 1995). 1. ***Facts***: The Oregon estate of a helicopter pilot killed in a Washington air crash brought a products liability action fifteen years later against the helicopter's manufacturers. The defendants were Delaware corporations with their principal places of business in Rhode Island and Texas but doing business in Oregon. The complaint was based on Oregon law. 2. ***Choice-of-law issue:*** Does Washington's repose statute save an action otherwise barred under Oregon's repose statute in a products liability claim brought by the estate of an Oregon resident under Oregon law against two corporations doing business in Oregon, when the place of the accident was Washington?	1. ***Stated methodology:*** Restatement (Second): Under a two-step analysis, is there an actual conflict? If so, which state has the most significant relationship to the action? 2. ***Application:*** Statutory construction and two-step analysis. In an interesting association of statutory limitations and repose issues, the court construed Oregon's Uniform Conflict of Laws-Limitation Act to establish a false conflict between Oregon and Washington laws of repose. 3. ***Choice of Law:*** Oregon